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Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions

Report of the Sixth Committee

Rapporteur: Mr. **Pham** Quang Hieu (Viet Nam)

I. Introduction

1. The item entitled "Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions" was included in the provisional agenda of the sixty-seventh session of the General Assembly pursuant to Assembly resolution 66/98 of 9 December 2011.

2. At its 2nd plenary meeting, on 21 September 2012, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 18th to 25th meetings, on 1, 2, 5, 6, 7, 9 and 16 November 2012. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/67/SR.18-25).

4. For its consideration of the item, the Committee had before it the report of the International Law Commission on the work of its sixty-fourth session (A/67/10), as well as chapter IV of the report of the Commission on the work of its sixty-third session, dealing with the topic "Reservations to treaties" (A/66/10 and Add.1).

5. The Chair of the International Law Commission at its sixty-fourth session introduced the report of the Commission on the work of that session: chapters I to V and XII at the 18th meeting, on 1 November, and chapters VI to XI at the 20th meeting, on 2 November. At the 18th meeting, on 1 November, the Committee decided that, owing to unforeseen disruptions in its programme of work, the consideration of chapter IV of the report of the Commission on the work of its sixty-third session, dealing with the topic "Reservations to treaties", would be postponed to the sixty-eighth session of the General Assembly.

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II. Consideration of draft resolution A/C.6/67/L.13

6. At the 24th meeting, on 9 November, the representative of Peru, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions" (A/C.6/67/L.13).

7. At the 25th meeting, on 16 November, the Committee adopted draft resolution A/C.6/67/L.13 without a vote (see para. 8).

III. Recommendation of the Sixth Committee

8. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions

The General Assembly,

Having considered the report of the International Law Commission on the work of its sixty-fourth session,[1]

Emphasizing the importance of furthering the progressive development and codification of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to enhance further their contribution to the progressive development and codification of international law,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Recalling also the role of Member States in submitting proposals for new topics for the consideration of the International Law Commission, and noting in this regard the recommendation of the Commission that such proposals be accompanied by a statement of reasons,

Reaffirming the importance for the successful work of the International Law Commission of the information provided by Member States concerning their views and practice,

Recognizing the importance of the work of the special rapporteurs of the International Law Commission,

Welcoming the holding of the International Law Seminar, and noting with appreciation the voluntary contributions made to the United Nations Trust Fund for the International Law Seminar,

Acknowledging the importance of facilitating the timely publication of the *Yearbook of the International Law Commission* and of eliminating the backlog,

Stressing the usefulness of focusing and structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics,

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[1] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10).

[2] Resolution 2625 (XXV), annex.

Wishing to enhance further, in the context of the revitalization of the debate on the report of the International Law Commission, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies,

Welcoming initiatives to hold interactive debates, panel discussions and question time in the Sixth Committee, as envisaged in General Assembly resolution 58/316 of 1 July 2004 on further measures for the revitalization of the work of the Assembly,

1. *Takes note* of the report of the International Law Commission on the work of its sixty-fourth session;[1]

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its sixty-fourth session, in particular for the completion of the first reading of the draft articles on the expulsion of aliens;

3. *Recommends* that the International Law Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee;

4. *Draws the attention* of Governments to the importance for the International Law Commission of having their views on the various aspects of the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report, regarding:

(a) Immunity of State officials from foreign criminal jurisdiction;

(b) Formation and evidence of customary international law;

5. *Decides* that the consideration of chapter IV of the report of the International Law Commission on the work of its sixty-third session,[3] dealing with the topic "Reservations to treaties", shall be continued at the sixty-eighth session of the General Assembly, during the consideration of the report of the Commission on the work of its sixty-fifth session;

6. *Draws the attention* of Governments to the importance for the International Law Commission of having their comments and observations by 1 January 2014 on the draft articles and commentaries on the topic "Expulsion of aliens" adopted on first reading by the Commission at its sixty-fourth session;[4]

7. *Notes with appreciation* the decision of the International Law Commission to include the topics "Provisional application of treaties" and "Formation and evidence of customary international law" in its programme of work,[5] and encourages the Commission to continue the examination of the topics that are in its long-term programme of work; [6]

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[3] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10); and ibid., addendum (A/66/10/Add.1).

[4] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10), para. 43.

[5] Ibid., paras. 267 and 268.

[6] Ibid., *Sixty-sixth Session, Supplement No. 10* (A/66/10), paras. 365-369.

8. *Invites* the International Law Commission to continue to give priority to the topics "Immunity of State officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)";

9. *Takes note* of the oral report by the Secretariat on assistance to special rapporteurs of the International Law Commission and of paragraph 280 of the report of the Commission,[1] and requests the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution 56/272 of 27 March 2002;

10. *Welcomes* the efforts of the International Law Commission to improve its methods of work,[7] and encourages the Commission to continue this practice;

11. *Takes note* of the tentative work programme of the International Law Commission for the remainder of the quinquennium, as reflected in paragraph 273 of its report;[1]

12. *Decides* to revert to the consideration of the recommendation contained in paragraph 388 of the report of the International Law Commission on the work of its sixty-third session[8] during the sixty-eighth session of the General Assembly;

13. *Invites* the International Law Commission to continue taking measures to enhance its efficiency and productivity and to consider making proposals to Member States to that end;

14. *Encourages* the International Law Commission to continue taking cost-saving measures at its future sessions, without prejudice to the efficiency and effectiveness of its work;

15. *Takes note* of paragraph 290 of the report of the International Law Commission,[1] and decides that the next session of the Commission shall be held at the United Nations Office at Geneva from 6 May to 7 June and from 8 July to 9 August 2013;

16. *Stresses* the desirability of further enhancing the dialogue between the International Law Commission and the Sixth Committee at the sixty-eighth session of the General Assembly, and in this context encourages, inter alia, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending the sixty-eighth session of the Assembly;

17. *Encourages* delegations, during the debate on the report of the International Law Commission, to adhere as far as possible to the structured work programme agreed to by the Sixth Committee and to consider presenting concise and focused statements;

18. *Encourages* Member States to consider being represented at the level of legal adviser during the first week in which the report of the International Law Commission is discussed in the Sixth Committee (International Law Week) to enable high-level discussions on issues of international law;

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[7] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), paras. 370-388.

[8] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10).

19. *Requests* the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

20. *Takes note* of paragraphs 291 to 296 of the report of the International Law Commission[1] with regard to cooperation and interaction with other bodies, and encourages the Commission to continue the implementation of articles 16 (e), 25 and 26 of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;

21. *Notes* that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

22. *Reaffirms* its previous decisions concerning the indispensable role of the Codification Division of the Office of Legal Affairs of the Secretariat in providing assistance to the International Law Commission, including in the preparation of memorandums and studies on topics on the agenda of the Commission;

23. *Reaffirms* its previous decisions concerning the documentation and summary records of the International Law Commission;[9]

24. *Welcomes* the institutionalization of the practice of the Secretariat to include the provisional summary records on the website relating to the work of the International Law Commission;

25. *Stresses* the need to expedite the preparation of the summary records of the International Law Commission;

26. *Endorses* the recommendation contained in paragraph 283 of the report of the International Law Commission;[1]

27. *Takes note* of paragraph 284 of the report of the International Law Commission,[1] stresses the unique value of the *Yearbook of the International Law Commission*, and requests the Secretary-General to ensure its timely publication in all official languages;

28. *Also takes note* of paragraph 287 of the report of the International Law Commission,[1] expresses its appreciation to Governments that have made voluntary contributions to the Trust Fund on the Backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the Trust Fund;

29. *Welcomes* the continuous efforts of the Codification Division to maintain and improve the website relating to the work of the International Law Commission;[10]

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[9] See resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly.

[10] www.un.org/law/ilc.

30. *Expresses the hope* that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants representing the principal legal systems of the world, including in particular those from developing countries, will be given the opportunity to attend the Seminar, as well as delegates to the Sixth Committee, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations Trust Fund for the International Law Seminar;

31. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue considering ways to improve the structure and content of the Seminar;

32. *Underlines the importance* of the records and topical summary of the debate in the Sixth Committee for the deliberations of the International Law Commission and, in this regard, requests the Secretary-General to forward to the Commission, for its attention, the records of the debate on the report of the Commission at the sixty-seventh session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

33. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and the draft articles adopted on either first or second reading by the Commission;

34. *Also requests* the Secretariat to make the complete report of the International Law Commission available as soon as possible after the conclusion of the session of the Commission for the consideration of Member States with due anticipation and no later than the prescribed time limit for reports in the General Assembly;

35. *Encourages* the International Law Commission to continue considering ways in which specific issues on which the views of Governments would be of particular interest to the Commission could be framed so as to help Governments to have a better appreciation of the issues on which responses are required;

36. *Recommends* that the debate on the report of the International Law Commission at the sixty-eighth session of the General Assembly commence on 28 October 2013.